

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE APPLICATION OF FISCHER
ADVANCED COMPOSITE
COMPONENTS AG FOR AN ORDER OF
DISCOVERY PURSUANT TO 28 U.S.C. §
1972

CASE NO. C08-1512 RSM

ORDER GRANTING IN PART
APPLICATION FOR ATTORNEY'S FEES
AND COSTS

This matter comes before the Court on Primus International, Inc.’s (“Primus”) Application for Fees and Costs. (Dkt. #25). On December 11, 2008, this Court denied Fischer Advanced Composite Components AG’s (“FACC”) motion to compel. (“Dkt. #16”). In that motion, FACC sought discovery of certain communications made by Primus, a corporation residing in this district, to its subsidiary company in the United Kingdom, St. Bernard Composites, Ltd., for use in foreign proceedings. FACC also sought to depose two individuals at Primus. The Court denied FACC’s motion, awarded fees and costs to Primus pursuant to FRCP 45(c)(1), and directed Primus to submit a declaration detailing their fees and costs in defending the subpoenas.

Primus responded as directed, and requested a total of \$59,968.73, the sum of \$58,361.50 in attorney's fees, and \$1,607.23 in costs. Primus contends that this amount is reasonable given the complex nature of this subpoena request, which required the involvement of English counsel, as well as substantial research under a statute that is normally

ORDER PAGE - 1

1 not utilized in a motion to compel. However, Primus's arguments are not persuasive. The
2 Court will reduce the total amount of fees and costs for the following two reasons.

3 First, the issues involved with the instant motion were straightforward. FACC's motion
4 to compel was brought under 28 U.S.C. § 1782, a statute that governs a district court's
5 decision to order the production of discovery for use in a foreign tribunal. While the Court
6 agrees with Primus that the statute is uncommon, it is not overly complex. The Supreme
7 Court has laid out a relatively clear four-part test to determine whether discovery should be
8 compelled under § 1782. *See Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241,
9 264-65 (2004). Moreover, the case law following *Intel Corp.* is not exhaustive, nor does it
10 warrant any special or additional research. Counsel for Primus nevertheless maintains that
11 "this was not an ordinary motion to compel, but instead involved *real issues of law that we*
12 *reasonably researched, evaluated, and then briefed to the Court.*" (Decl. of Elburg, ¶ 14)
13 (emphasis added). The Court finds this statement remarkable. The statement implies that in
14 "ordinary" motions to compel, reasonable research, evaluation, and briefing is not performed,
15 and that "ordinary" motions to compel do not involve "real" issues of law. The Court
16 understands the spirit of what counsel for Primus is attempting to say, but certainly does not
17 find any legitimacy to Primus's argument. Primus does not deserve any special treatment in
18 this case.

19 Second, the collective work by the three firms that apparently dealt with the motion to
20 compel is both duplicative and excessive. It is well-settled that a district court should exclude
21 from an award of attorney's fees hours that were not reasonably expended. *Hensley v.*
22 *Eckerhart*, 461 U.S. 424, 434 (1983). Thus, courts must scrutinize requests for attorney's fees
23 and exclude those hours that are excessive, duplicative, or unnecessary. *See Carrasco v. City*
24 *of Douglas*, 1996 WL 792075, *2 (9th Cir. 1995); *see also Lipsett v. Blanco*, 975 F.2d 934,
25 938 (1st Cir. 1992) ("A trial court should ordinarily greet a claim that several lawyers were
26 required to perform a single set of tasks with healthy skepticism."). Here, the Court finds no
27 justification in awarding Primus fees for work done by three separate law firms and six
28 different attorneys. As previously established, the substantive issues in this case were

1 straightforward. The excessive nature of Primus's fee request is highlighted by the
2 approximately 133 hours billed by all three firms in drafting, reviewing, and revising the
3 responsive brief and the two supporting declarations in support thereof. As a result, the Court
4 will only consider the fees and costs incurred by counsel at Savitt and Bruce. It was the
5 attorneys at Savitt and Bruce who were local counsel to this litigation, and were therefore
6 responsible for responding to FACC's motion to compel.

7 Consequently, the Court finds that Primus is only entitled to the fees and costs incurred
8 by local counsel in this case. These amounts were both reasonable and appropriate in
9 defending FACC's motion to compel. This amount totals \$11,977.94, the sum of \$11,901.50
10 in attorney's fees, and \$76.44 in costs.

11 The Clerk is directed to forward a copy of this Order to all counsel of record.

12
13 DATED this 17 day of February, 2009.

14
15 
16 RICARDO S. MARTINEZ
17 UNITED STATES DISTRICT JUDGE
18
19
20
21
22
23
24
25
26
27
28